IN THE HIGH COURT OF JUDICATURE FOR RAJASTHAN AT JODHPUR.

:::

JUDGMENT

Durga Prasad. vs. Naresh Chand & Anr.

S.B.CIVIL SECOND APPEAL NO.56/2004 UNDER SECTION 100 CPC AGAINST THE JUDGMENT AND DECREE DATED 4.4.2003 PASSED BY SHRI AKSHAY CHANDRA KIRADU, ADDITIONAL DISTRICT JUDGE, CHITTORGARH IN APPEAL NO.78/1999.

DATE OF JUDGMENT ::: 11.11.2005

PRESENT

HON'BLE MR. PRAKASH TATIA, J.

Mr. JK Bhiaya, for the appellant.

- - - - -

BY THE COURT:

Heard learned counsel for the appellant/defendant.

The appellant is aggrieved against the judgments and decrees dated 6.11.1997 and 4.4.2003 passed by the trial court and the first appellate court respectively.

The trial court decreed the suit of the plaintiff/respondent against the appellant/defendant and granted injunction that the appellant shall not encroach

upon the plaintiff's ownership land measuring 21 feet by 20 feet and shall not interfere in the peaceful possession of the property in question. The appeal against this judgment and decree was dismissed by the first appellate court.

Learned counsel for the appellant vehemently submitted that the trial court decided the issue no.4 in favour of the appellant and held that the appellant purchased land measuring 18 feet x 10 feet. It is also submitted that the appellant is in possession of the property in question and in view of these facts alone, no decree for injunction could have been granted by the two courts below. It is also submitted that the courts below have committed serious error of law in holding that the property in dispute is the property of the plaintiff whereas in fact, the plaintiff's property was acquired and he want to grab the defendant's property.

I have considered the submissions of learned counsel for the appellant and perused the facts of the case.

It is clear from the facts of the case that the plaintiff and one Smt. Kaushalya Devi purchased plot measuring 50 feet by 50 feet vide registered sale deed dated 3.1.1974 for a consideration of Rs.750/-. Out of this, a piece of land measuring 30 feet x 50 feet was acquired by the U.I.T. and out of remaining 20 feet x 50 feet, land measuring 20 feet x 20 feet was given in share of Smt. Kaushalya Devi and the remaining land measuring 20

feet x 30 feet remained in the ownership of the plaintiff. It is stated that the plaintiff raised construction over the land measuring 20 feet x 20 feet and thereafter, that portion was given to Smt. Kaushalya Devi who is plaintiff's co-purchaser. The trial court twice appointed Commissioner and obtained the factual report of spot. After considering all the facts, the trial court reached to the conclusion that the plaintiff could not rebut the evidence of the defendants about the defendant no.1's purchase of land measuring 18 feet x 10 feet and, therefore, the trial court decided the issue no.4 in favour of the defendant. However, despite this fact, the trial court reached to the conclusion that the land for which the plaintiff is seeking relief is different land and not the land which was purchased by the defendants and, therefore, granted the decree for injunction against the defendants. The finding of fact was upheld by the first appellate court after careful consideration of facts. Since the finding of facts are based on evidence, therefore, there is no scope for interference of this Court under Section 100 CPC and otherwise also, even no factual error has been pointed out in the impugned judgments by the appellant.

So far as the contention of learned counsel for the appellant that the defendants were in possession, that cannot be accepted because of the simple reason that the two courts below have not held so and specifically held that the land purchased by the defendant is different than the land belonging to the plaintiff.

In view of the above, I do not find that any substantial question of law is involved in this appeal. Hence, this second appeal is dismissed.

(PRAKASH TATIA), J.

S.Phophaliya